

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

JAMES CARLIN,

No. C 10-03156 SI

Petitioner,

**ORDER DISMISSING PETITION FOR
WRIT OF HABEAS CORPUS**

v.

VINCE CULLEN, Warden,

Respondent.

James Carlin, an inmate at the San Quentin State Prison, filed this pro se action seeking a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Currently before the Court is respondent Vince Cullen's motion to dismiss the petition for failure to exhaust. Petitioner has obtained the assistance of an attorney for the purpose of contesting respondent's motion. For the following reasons, the Court DISMISSES the petition, and DENIES respondent's motion as moot.

BACKGROUND

Carlin states in his petition that he is serving a sentence of 15 years to life plus two years on a 1980 conviction in San Francisco County Superior Court for second degree murder with an enhancement for use of a firearm. His petition does not challenge that conviction but instead challenges an August 14, 2008 decision by Governor Schwarzenegger that reversed a decision by the Board of Parole Hearings ("BPH") and found him not suitable for parole.

On July 29, 2010, the Court dismissed three of petitioner's five claims. Petitioner's two remaining claims are: (1) the Governor's decision violated his federal right to due process because it was not supported by sufficient evidence; and (2) the Governor's policy and practice of rarely granting

1 parole to lifesentenced prisoners violates the legislative framework under Penal Code § 3041 and
 2 violates due
 3 process.

4 5 DISCUSSION

6 I. Sufficient evidence claim

7 In his petition, Carlin states that he was given the opportunity to speak at the BPH hearing, and
 8 that the Governor notified him as to the reasons that he was denied parole. Carlin does not claim that
 9 he was not permitted to contest the evidence against him or that he was not afforded access to his
 10 records in advance. Carlin's sole argument is that there was not sufficient evidence to support the
 11 Governor's decision. This argument is foreclosed by *Swarthout v. Cooke*, 131 S. Ct. 859 (2011) (per
 12 curiam) and *Styre v. Adams*, --- F.3d ----, 2011 WL 2176465, *1 (9th Cir. 2011). Petitioner's claim is
 13 DISMISSED.

14 15 II. Rare parole policy claim

16 Petitioner describes his second claim as follows:

17 The extraordinarily high parole denial rate [in California] combined with the high
 18 gubernatorial reversal rate of the few grants made by the Board . . . turns upside down the
 19 legislative mandate that the Board shall normally set a parole date for a prisoner and makes
 20 a mockery of the legislative scheme for predictable and uniform punishment for most life
 21 prisoners. . . . Independent of but consistent with the executive's arbitrary disregard for
 22 the legislative mandate for regular parole and its bias against the granting of parole is the
 23 arbitrariness of its individual decisions. The executive regularly makes arbitrary findings
 24 to justify its refusal to release life prisoners on parole and systematically fails to consider
 25 substantial evidence in individual cases that shows the prisoner is suitable for release from
 26 prison Such arbitrary disregard of the state's own laws regarding life and liberty
 27 constitutes a violation of federal due process. . . . Carlin's case illustrates the parole
 28 authority's illegal practice of arbitrarily disregarding the statutory framework for parole
 consideration by making the legislative exception the administrative rule in violation of
 due process. It also indicates the authority's rare-parole policy is a product of an
 institutional political bias that unlawfully deprived life prisoners of a fundamentally fair
 determination of their liberty interest in parole in violation of due process.

Petition (Doc. 1) at 33–41.

Essentially, petitioner claims that the BPH and Governor deny parole so often, and without
 sufficient evidence, that their actions constitute an arbitrary disregard of California state law regarding

1 parole. This argument would require the Court to look beyond the question of whether petitioner
2 received constitutionally adequate procedures, and it too is foreclosed by *Cooke* and *Styre*. See *Cooke*,
3 131 S. Ct. at 863 (“Because the only federal right at issue is procedural, the relevant inquiry is what
4 process Cooke and Clay received, not whether the state court decided the case correctly. . . . [T]he
5 responsibility for assuring that the constitutionally adequate procedures governing California’s parole
6 system are properly applied rests with California courts, and is no part of the Ninth Circuit’s business.”).
7 Petitioner’s claim is DISMISSED.

8 9 CONCLUSION

10 Because Carlin’s remaining claims are foreclosed by *Cooke* and *Styre*, his petition for a writ
11 of habeas corpus is DISMISSED. The Court DENIES respondent’s motion to dismiss the petition
12 for failure to exhaust one of his claims as moot. (Doc. 4.)

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14 IT IS SO ORDERED.

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16 Dated: June 23, 2011



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SUSAN ILLSTON
United States District Judge